

1 **COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C §§ 1983**

2
3 Name KEYES EDUARDO **ORIGINAL** *FEB 5 2008*
4 (Last) (First) (Initial) *RICHARD W. WIEKING*
5 Prisoner Number P-71966 *CLERK, U.S. DISTRICT COURT*
6 Institutional Address P.B.S.P., P.O.B. 7500, CRESCE *NORTHERN DISTRICT OF CALIFORNIA*
7 NT C.T.Y.
8 CA 95532

SI

(PR)

9 **E-filing UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 EDUARDO KEYES
(Enter the full name of plaintiff in this action.)

12 vs.

13 RICHARD KIRKLAND "WARDEN"

14 M. YAK "A.U.C.")

15 S. ANDERSON "WATCH COMMANDER"

16 JOHN DOES "C.O.'S" ET AL

17 (Enter the full name of the defendant(s) in this action))

CV

08 0813

Case No. _____
(To be provided by the clerk of court)

**COMPLAINT UNDER THE
CIVIL RIGHTS ACT,
42 U.S.C §§ 1983**

Jury trial Requested

18 **[All questions on this complaint form must be answered in order for your action to proceed.]**

19 I. **Exhaustion of Administrative Remedies**

20 **[Note: You must exhaust your administrative remedies before your claim can go**
21 **forward. The court will dismiss any unexhausted claims.]**

22 A. Place of present confinement PELICAN BAY STATE PRISON

23 B. Is there a grievance procedure in this institution?

24 YES () NO ()

25 C. Did you present the facts in your complaint for review through the grievance
26 procedure?

27 YES () NO ()

28 D. If your answer is YES, list the appeal number and the date and result of the

008-813-SI

1 appeal at each level of review. If you did not pursue a certain level of appeal,
2 explain why.

3 1. Informal appeal bypassed

4 _____
5 _____
6 2. First
7 formal level bypassed
8 _____
9 _____

10 3. Second formal level ACB-01640, Jan 31, 2007. Partially granted.
11 no retaliation will be taken against petitioner. Incidents
12 under review by Executive Review Committee. 4 Third
13 formal level IRAB NO: 0610464 May 11, 2007. Appeal denied.
14 _____
15 _____

16 E. Is the last level to which you appealed the highest level of appeal available to
17 you?

18 YES NO

19 F. If you did not present your claim for review through the grievance procedure,
20 explain why. N/A

21 II. Parties

22 A. Write your name and your present address. Do the same for additional plaintiffs,
23 if any.

24 EDUARDO REYES I.D.#71966

25 Felican Bay STATE PRISON

26 P.O. Box 7500, CRESCENT CITY, CA 95532

27 B. Write the full name of each defendant, his or her official position, and his or her

PARTIES.

1. Plaintiff EDUARDO REYES, INMATE housed in Pelican Bay STATE Prison, and was housed there throughout the events described in this complaint.
2. Defendant Robert Hotel is the warden of P.I.S.S.P. and responsible for the treatment of inmates under his authority and the training of officers
3. Defendant Myax was the highest ranking officer in charge during the events described in this and was the designated A.O.O.
4. Defendant S. Anderson was the B-yard Sgt. and watch commander during the events described in this complaint and was responsible for assigning clean up crews to decontaminate all affected sprayed cells. and for issuing the order to allow Plaintiff to remain in Boxer shorts and socks only and handcuffed hands behind his back for a period exceeding 16 hours and overnight.
5. Defendant John does (floor officers in B-yard 8 block, to be named later) are responsible for assuring that inmates housed within their assigned buildings receive the basic hygenic necessities.

PARTIES

(CONT...)

6 defendants. Sgt. Rippot, slavee, chapman, miller, love, George and Richereek, were assembled as an extraction team and responsible for extracting Plaintiff with unnecessary force and escorting inmate to concrete yard.

7. Defendant D.Nelson is the 8 block control booth tower officer and was responsible for watching Plaintiff and other defendants in the concrete yard.

1 place of employment.

2 RICHARD KIRKLAND "WARDEN", Pelican Bay State Prison.

3 M. YAT "AOD" Pelican Bay State Prison

4 J. ANDERSON. "WATCH COMMANDER" Pelican Bay State Prison

5 (see list of PARTIES defendants; all employed by Pelican Bay State
6 Prison, P.O.B. 7500, Crescent City, CA 95532.

III.

7 Statement of Claim

8 State here as briefly as possible the facts of your case. Be sure to describe how each
9 defendant is involved and to include dates, when possible. Do not give any legal arguments or
10 cite any cases or statutes. If you have more than one claim, each claim should be set forth in a
11 separate numbered paragraph.

12 1. on June 24, 2006, Pelican Bay state prison's B-yard was locked
13 down and an emergency count was called since some inmates
14 classified as "Southern Hispanics" began to cover their cell doors
15 with linen

16 2. Plaintiff Eduardo Reyes classified as a "Southern Hispanic" was
17 targeted by defendants, to be removed from his cell and placed in
18 an open-roof enclosure known as "concrete yard."

19 3. Sgt. Peppiot (defendant), C.O's, Slavec, Chapman, Miller, Richereck,
20 George, and Love (defendants) approached Plaintiff's cell and
21 ordered Plaintiff to be handcuffed.

22 4. without waiting for plaintiff to adhere to orders, all defendants
23 began to administer O.C. spray and flash grenades into the
24 cell. (continued next page)

25 IV. Relief

26 Your complaint cannot go forward unless you request specific relief. State briefly exactly
27 what you want the court to do for you. Make no legal arguments; cite no cases or statutes.

28 A. issue an injunctive relief ordering and prohibiting warden Kirk

through the cell feeding port.

5. After plaintiff was sprayed and bombed with flash grenades, he was ordered by defendant Peppiat to strip down to his socks and boxers and was escorted handcuffed into the Building 8 concrete yard.

8th Amendment violation

6. Plaintiff was left in the concrete yard handcuffed with hands behind his back, along with all the inmates classified as "Southern Hispanic". It was approx. 10:25 pm and plaintiff was left in this position and location for a period stretching over night and exceeding 16 hours, in frigid temperatures.

7. Plaintiff was not fed breakfast or lunch and could not defecate or urinate during this period and was not given basic hygienic necessities such as soap or toilet paper, and expressly denied by defendant; D. Nelson.

8. Plaintiff during this period was wet from the decontaminated showers defendant Peppiat administered when plaintiff was initially placed in the concrete yard and became extremely sick with flu;

8th Amendment violation

9. On June 25, 2006. at approx. 1:30 pm, the plaintiff along with the other inmates left out overnight in the concrete court were brought back into Building 8 and back into their cells.

10. upon going to plaintiff's assigned cell, Plaintiff was not fed breakfast or lunch, and when Plaintiff asked the unknown escorting officer, the officer replied, "you should of thought about that before."
11. Plaintiff was further stripped in front of his cell of his socks and placed back into the cell. upon entering Plaintiff noticed that cell was not fully decontaminated. there was orange powder all over the walls and top bunk and orange puddles of liquid on the cell floor and bottom bunk.
12. Plaintiff looked around the cell and found that the cell was stripped of all plaintiff's property and even all state property. there was no hygenic cosmetics, no linen, no mattress, no eating utensil. there was absolutely nothing in plaintiff's cell
13. on June 25, 2007 during dinner service, Plaintiff was given a food tray while the cell was still in its contaminated state and plaintiff still lacking a food utensil. Plaintiff asked defendant John Doe (unknown B-8 floor officer) if he could get a food eating utensil and if the cell was going to be fully decontaminated and if nor at least give him a towel so he could do it himself. defendant John Doe (unknown B-8 floor officer) replied that "nothing is going to happen in regards to cleaning the cell and as far as an eating utensil you could eat with your hands."

14. plaintiff was left in this state of a contaminated cell, no linen, using the same boxer underwear (contaminated), no eating utensil, for a period of 5 days

15. on June 30, 2007, after 5 days of inhumane treatment and 5 days of cruel living conditions resulting extreme mental stress and sleep deprivation, plaintiff was transferred to administrative segregation and promptly filed a grievance in lieu of this inhumane treatment. (see sec. I of this complaint.

IV. Request for Relief

(cont...)

1. \$5,000 Jointly and severally against defendants

S. Anderson, Dikays, Cook, Robert Hotel for issuing the order to allow plaintiff wet and clothed only in boxer shorts and socks to remain handcuffed behind his back and outside in the concrete yard for a period exceeding 16 hours and over nights causing illness to plaintiff and emotional and mental stress.

2. \$5,000 Jointly and severally against defendants: S. Anderson, D. Nelson, Peppiot, and John Doe (to be named) for placing inmate plaintiff in a cell they were responsible to decontaminate and clean, and withheld the basic

IV. Request for Relief.

(cont...)

necessities of hygenic living including soap, linen, tooth paste, deoderant, a change of Boxer shorts, mattress, eating utensil E.T.C. while she cell and plaintiffs Boxer shorts remained contaminated with O.C. spray and pepper spray residue.

1 Hotel and P.B.S.P. from duplicating such cruel and inhumane treatment.

2 B. Award compensatory damages in the following amount:

3 1. \$ 5,000 jointly and severally against defendants: Anderson,
4 D. Kays, Cook, Robert Hotel, D. Nelson, Peppiot, John Doe (to be named
5 later), slavee, Rich Creek, Chapman, Miller, Levee George.

6 C. Award punitive damages in the following amount:

7 I declare under penalty of perjury that the foregoing is true and correct.

8

9 Signed this Reyes E. day of 1-30-, 2008

10

Reyes Edwards.

11

(Plaintiff's signature)

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EDUARDO REYES, pro se litigant

C.D.C. P-71966

P.B.S.P., P.O.B. 7500

CRESCENT CITY, CA. 95532

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDUARDO REYES.
PLAINTIFF

v.

ROBERT HORREL WARDEN, ET AL.
Respondents.

CASE NO:

MEMORANDUM OF LAW

This is a civil rights case filed under 42 U.S.C. §1983, by a state prisoner and asserting claims for the unconstitutional subjection of plaintiff to cruel and inhumane treatment and living standard in violation of 8th Amendment protections of the U.S. Constitution.

facts.

The complaint alleges that the plaintiff was unnecessarily cell-extracted by several correctional officers, and subsequently was stripped of his clothes, remaining in only boxer shorts and socks, and handcuffed with hands behind his back. Furthermore, the plaintiff was forced to remain in this position for a period exceeding 16 hours and over night in an open roof enclosure known as the "concrete yard."

Additionally Plaintiff was placed back into his cell which was not fully decontaminated and had o.c and pepper spray powdered over the cell walls and contained puddles in the center of the cell as well as bottom bunk which consisted of a mixture of o.c, spray, pepper spray and water. Plaintiff's cell was stripped of all property both personal and state and made to languish inside the cell without any change of linen, cleaning materials, mattresses, eating utensils or basic hygenic necessities for a period of 5 days. Plaintiff filed a grievance concerning the unconstitutional treatment to the warden, which was denied in part only granting that petitioners would not be retaliated against for using the grievance procedure. This decision was reached by defendant warden Robert Morel.

ARGUMENT

THE COURT SHOULD APPOINT COUNSEL FOR THE PLAINTIFF.

In deciding whether to appoint counsel for an indigent inmate litigant, the court should consider the complexity of the case's legal and factual issues (COOKISH V. CUNNINGHAM, 787 F.2D 14 (1ST CIR. 1986)). In addition, courts have determined that the most important factor is whether the case has merit. COOPER V. H. SARGENTI CO., INC., 877 F.2D 170, 173 (2D CIR. 1989). Each of those factors weighs in favor of appointing counsel in this case.

1. factual complexity. The plaintiff alleges that supervisory officials at Pelican Bay knew and ordered that plaintiff and other inmates be kept handcuffed, wet, and clothed only in boxer shorts and socks in an open roofed concrete enclosure for a period exceeding 16 hours and including overnight. Plaintiff additionally alleges that supervisory officials deliberately allowed their subordinates to allow plaintiff to be placed in a cell not fully decontaminated stripped of all property both personal and state, lacking basic hygienic necessities including soap, eating utensils, clean clothing, linen, or even a change of boxer shorts for a period of 5 days. The number of defendants and claims makes this a factually complex case.

2. the plaintiff's inability to investigate the claims herein involve and require extensive discovery concerning orders showing knowledge and active participation in the cruel and inhumane treatment of plaintiff from Supervisory officials leading up and down the administration's chain of command, as well as the Pelican Bay State Prison's long documented past of inmate rights abuse in reports and prior suits and grievances. *Tucker v. Dickey* 613 f. supp. 1124, 1133-34 (W.D.Wis.1985) (need for discovery supports appointment of counsel).

3. Conflicting testimony. the plaintiff's account of being held unconstitutionally outside in frigid weather handcuffed hands behind back, wet, and clothed only in boxer shorts and socks over night and exceeding 16 hours contrasts with officers statements that inmates in another block refused to enter building and posed security risks and that was the reason why plaintiff was held in such a position. this aspect of the case presents credibility issues and supports the appointment of counsel. *Gurson v. Coughlin* 679 f. supp. at 273 (W.D.N.Y.1988).

4. The ability of the indigent to present his claims. The plaintiff is an indigent prisoner with no legal training and a 5th grade point level, factors that support the appointing of counsel. *Whisenant v. Yuan*, 739 f.2d 160, 163 (4th Cir. 1984).

5. Legal complexity. the large number of defendants, some of whom are supervisory officials, presents complex legal issues of determining which defendants were sufficiently responsible and personally involved to be held liable for the constitutional violations.

Abdullah V. Gunter, 949 F.2d 1032, 1036 (8th Cir. 1991)

6. merit of the case. the plaintiff's allegations, if proved clearly would establish a constitutional violation. the events described in the complaint clearly states an Eighth Amendment violation. Wilson v. Seiter 501 U.S. 298 (1991); Palmer v. Johnson, 193 F.3d 346, 352 (5th Cir. 1999).

Conclusions.

for the aforementioned reasons plaintiff asserts that his claims make necessary the appointment of counsel. Plaintiff asserts to the best of his knowledge the foregoing is true and correct under penalty of perjury under the laws of the U.S. and California

DATED:

Respectfully submitted.

EDUARDO REYES. C.O.C.# P-71966.
P.B.S.P., P.O.B. 7500
CRESCENT CITY, CA 95532

EXHIBIT A.

Description: Plaintiffs administrative review procedure grievance and decisions through all 3 levels.

12 pages.

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
INMATE APPEALS BRANCH
P. O. BOX 942883
SACRAMENTO, CA 94283-0001

DIRECTOR'S LEVEL APPEAL DECISION

Date: **MAY 11 2007**

In re: Reyes, P-71966
Pelican Bay State Prison
P.O. Box 7000
Crescent City, CA 95531-7000

IAB Case No.: 0610464 Local Log No.: PBSP 06-01640

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner R. Pimentel, Facility Captain. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: It is the appellant's position that staff at Pelican Bay State Prison (PBSP) abused their authority and used excessive force when the appellant was extracted from his cell. The appellant contends that he was stripped down to his boxer shorts and left outside for an extremely long time. The appellant requests that his "Work Group/Privilege Group" be restored, that all of his property be returned, and that all involved staff be disciplined.

II SECOND LEVEL'S DECISION: The reviewer found that the appellant has not been subjected to misconduct on the part of named staff. The reviewer affirms that appropriate supervisory staff has been assigned to conduct an inquiry into this matter. The Warden's Executive Review Committee reviewed the submitted material and interviewed the involved parties. In order to determine the facts, the inquiry arising from this appeal included his interview; interview of department employees; and review of current policies, laws, and procedures. Additional research may have included interviews of other inmate's or review of the appellant's central file. The First Level of Review and Second Level of Review (SLR) denied the appeal.

III DIRECTOR'S LEVEL DECISION: Appeal is denied.

A. FINDINGS: Upon review of the documentation submitted, it is determined that the appellant's allegations have been reviewed and evaluated by administrative staff and an inquiry has been completed at the SLR. In the event that staff misconduct was substantiated, the institution would take the appropriate course of action. All staff personnel matters are confidential in nature and not privy to the inquiries of other staff, the general public or the inmate population, and would not be released to the appellant. In this case, the institution has reported the disposition to the appellant. Although the appellant has the right to submit an appeal as a staff complaint, the request for administrative action regarding staff or the placement of documentation in a staff member's personnel file is beyond the scope of the appeals process. Therefore no relief is provided at the Director's Level of Review.

B. BASIS FOR THE DECISION:

California Penal Code Section: 832.7, 832.8

California Code of Regulations, Title 15, Section: 3000, 3001, 3004, 3391

Administrative Bulletin 98/10: PROCESSING OF INMATE/PAROLEE APPEALS, CDC FORMS 602, WHICH ALLEGE STAFF MISCONDUCT

C. ORDER: No changes or modifications are required by the institution.

REYES, P-71966
CASE NO. 0610464
PAGE 2

This decision exhausts the administrative remedy available to the appellant within CDCR.



N. GRANNIS, Chief
Inmate Appeals Branch

cc: Warden, PBSP
Appeals Coordinator, PBSP

**INMATE/PAROLEE
APPEAL FORM**
 CDC 802 (12/87)

Location: Institution/Parole Region

Log No.

Category

IPBSP**A06-01640****7/9**Claims Use of force & conditions
AFTER Violated Dept.
Policy & Procedure**STAFF COMPLAINT**

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and assignment investigative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	NUMBER	ASSIGNMENT	UNITS/ROOM NUMBER
REYES, Eduardo	P71966		13-2214 A2102

A. Describe Problem: ON OR ABOUT 10 PM, ON SATURDAY JUNE 24, 2006, IN PELICAN BAY STATE PRISON, IN FACILITY B, BUILDING B; THE P-B-S-P STAFF CARRIED OUT A WILLING, PLANNED, PREMEDITATED USE OF GAS TO COMMIT A "CELL EXTRACTION". THE "CELL EXTRACTION" WAS IN TOTAL VIOLATION OF DEPARTMENTAL PROCEDURE, POLICY & OPERATIONS. AFTER THIS WAS CARRIED OUT, I WAS STRAPPED DOWN TO MY BUNKERS & SOCKS, & SHOES. I WAS TAKEN TO THE CONCRETE YARD IN BLDG #7 FOR "DECONTAMINATION". THEN I WAS TAKEN BACK TO BLDG #8, HAD MY SHOES TAKEN & SUBSEQUENTLY HAD PLASTIC CUFFS PLACED ON MY WRISTS w/ MY ARMS BEHIND MY BACK.

If you need more space, attach one additional sheet.

B. Action Requested: 1) THAT I BE PLACED BACK ON FULL PROGRAM, MY A-I-A STATUS REINSTATED, ALL MY PROPERTY RETURNED TO ME IN ITS ENTIRETY, THE 115 ISSUED TO ME NULLIFIED - IN THE INTEREST OF JUSTICE.
2) THAT ALL THOSE RESPONSIBLE FOR THE CRUEL, UNUSUAL & INHUMANE

Inmate/Parolee Signature: Reyes Eduardo P-71966

Date Submitted: 7-6-06

C. INFORMAL LEVEL (Date Received: _____)

Staff Response: n/a

RECEIVED
FEB 26 2007
INMATE APPEALS
BRANCH

Staff Signature: _____ Date Returned to Inmate: _____

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

BYPASS

Signature: _____

Date Submitted: _____

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

CDC Appeal Number: _____

TO COW
JUL 9 2008

2ND APPEALS
JUL 26 2008

First Level Granted P. Granted Denied Other _____

E. REVIEWER'S ACTION (Complete within 15 working days): Date assigned: _____ Due Date: _____

Interviewed by: _____

BYPASS

Staff Signature: _____ Date Completed: _____

Division Head Approved: _____ Returned _____

Signature: _____ Title: _____ Date to Inmate: _____

F. If dissatisfied, explain reasons for requesting a Second-Level Review, and submit to Institution or Parole Region Appeals Coordinator within 15 days of receipt of response.

BYPASS

Signature: _____ Date Submitted: _____

Second Level Granted P. Granted Denied Other _____G. REVIEWER'S ACTION (Complete within 10 working days): Date assigned: 7-26-06 Due Date: 9-7-06 See Attached LetterSignature: B. Sample CCI Date Completed: 1-29-07Warden/Superintendent Signature: _____ Date Returned to Inmate: 2/8/07

H. If dissatisfied, add data or reasons for requesting a Director's Level Review, and submit by mail to the third level within 15 days of receipt of response.

I WOULD LIKE TO RESOLVE THIS 602 IN A TIMELY MANNER THIS SECOND LEVEL WAS P.GRANTED DO TO THIS INCIDENT PENDING REVIEW BY THE EXECUTIVE REVIEW COMMITTEE (ERC) WHO WILL DETERMINE THE FINDINGS FOR THESE ALLEGATIONS THERE IS NO TIME LINE FOR THE ERC I WOULD LIKE TO RESOLVE THESE ALLEGATIONS IT'S STATED ON THESE THIS 602 REFOR MY IS DAY OUR UP

Signature: Reyes Eduardo - P-71966 Date Submitted: 2-19-07For the Director's Review, submit all documents to: Director of Corrections
P.O. Box 942883
Sacramento, CA 94283-0001
Attn: Chief, Inmate AppealsDIRECTOR'S ACTION: Granted P. Granted Denied Other _____ See Attached LetterDate: MAY 11 2007

Case 3:08-cv-00813-SI Document 1 Filed 02/05/2008 Page 21 of 33

BACK & PUT INTO THE OPEN AIR CONCRETE YARD IN ONLY MY UNDERWEAR & SOCKS. I WAS WET & IT WAS EXTREMELY COLD. IT WAS MAYBE ABOUT 10:45 PM OR EARLIER WHEN I WAS PLACED INTO THE OPEN AIR CONCRETE YARD. NOW, THE P-B-S-P STAFF BE IT THE 40'S, SERGEANT, LIEUTENANT, CAPTAIN, ASSOCIATE WARDEN, OR WARDEN MADE A DECISION, FOR WHATEVER REASON, AND LEFT ME OUT IN THE CONCRETE YARD ALL NIGHT LONG IN ONLY MY UNDERWEAR, SOCKS & CUFFED BEHIND MY BACK. I WAS NOT TOLD WHY. THE NIGHT TEMPERATURE WAS EXTREMELY FREEZING COLD, I COULD NOT STOP SHAKING AND I WAS DEATHLY AFRAID OF CATCHING A COLD, FLU OR WORSE, ENCEMENIA. I COULD NOT USE THE RESTROOM, EITHER DEFECATE OR URINATE BECAUSE MY ARMS WERE CUFFED BEHIND MY BACK. BECAUSE I HAD NO SHOES, I COULD NOT STAND FOR LONG BECAUSE MY FEET WERE NUMB & HURT FROM THE COLD HARSH CONCRETE. I HAVE MEDICAL PROBLEMS IN MY FEET, WHICH MADE IT WORSE, SO I WAS FORCED TO SIT ON THE COLD HARSH CONCRETE. I CANNOT DESCRIBE IN MELE WORDS THE EXCRUCIATING, PENETRATING, WUD & TORTUROUS INHUMANE SUFFERING I HAD TO ENDURE THAT WHOLE NIGHT.

AFTER SPENDING A LONG, HORRIFIC, & COLD NIGHT ON SUNDAY MORNING WE ASKED A CORRECTIONAL OFFICER (C/O) IN BLOC B CONTROL TOWER IF WE COULD GET SOME SOAP, TOILET PAPER. THE MOST BASIC NECESSITIES OF HYGIENE & HUMAN DECENCY. THE C/O REFUSED AND SARCASTICALLY & MALICIOUSLY STATED "YOU HAVE SOAPS", INSINUATING THAT WE USE OUR SOAPS AS TOILET PAPER. WHEN ASKED HIS NAME, THE C/O REPLIED & GAVE IT & STATED "I WORK ~~7~~ 5 DAYS A WEEK, YOU STILL DON'T KNOW ME? WE THEN ASKED TO TALK TO A SERGEANT OR SOMEONE IN AUTHORITY BUT THE C/O STATED "I'M JUST HERE TO WATCH YOU." THIS RETUSING ANY & ALL OUR REQUESTS. WE ASKED HIM OTHER QUESTIONS BUT HE REFUSED TO TALK TO US.

THE CONCRETE YARD WAS FILTHY, IT HAD BIRD FECE, A BIRD'S NEST IN THE CENTER LOWER WINDOW OF THE CONTROL TOWER, WHOSE BIRDS WOULD FLY OVER US & DRO FEELES INTO THE CONCRETE YARD. THE CONCRETE YARD ALSO HAD INSECTS, DIRT & HUMAN HAIR-SCALP & NAIL, ROBBLES, ROCKS, DIRT & A FOUL SMELLING WATER POUR BY THE TOILET/SINK; ALSO IT HAD DIRTY LINEN & TRASH. THE SINK WAS COMPLETELY FILTHY AND BACTERIA INFESTED. THE SINK BOWL WAS LAKER WITH MET TOILET PAPER, TRASH, GREEN MILDEW, HAIRS, BIRD FEATHERS, DIRT & WHO KNOWS WHAT IT WAS TOTALLY & EGREGIOUSLY UNSANITARY. YET I WAS FORCED TO DRINK FROM BECAUSE I HAD NO ALTERNATIVE OR CHOICE. THE TOILET WAS ENCRASTED IN DIRTY WATER, MILDEW, HAIRS, BIRD FECE, BACTERIA, DIRT, AND SOME SORT OF SLIME. SINCE I WAS PLASTIC CUFFED BEHIND MY BACK, I HAD TO HOLD MY URINE IN & ALSO MY BOWELS, THE FILTHY CONDITION OF THE TOILET, THE MET TOILET PAPER & WAS IN GREAT FEAR OF CATCHING A DISEASE, SUCH AS M.R.S.A. THE PAIN WAS EXCRUCIATING.

THE P-B-S-P STAFF DID NOT FEED US BREAKFAST OR LUNCH THAT SUNDAY MORNING & AFTERNOON. WHEN WE ASKED TO BE FEED ONE OF THE C/O'S IN THE CONTROL BLOC SAWD "WE DON'T FEED OUT HERE", BECAUSE HE FULL WELL KNEW THAT THE FILTHY CONDITION OF THE CONCRETE YARD WAS EGREGIOUSLY UNSANITARY & A HEALTH RISK/VIOLATION. I WAS HELD OUTSIDE IN THE FREEZING NIGHT IN MY UNDERWEAR & SOCKS w/ NO TOILET PAPER, SOAP, FOOD, & CUFFED FOR MANY HOURS!

SOME TIME SUNDAY NIGHT, THE C/O'S TOLD US THAT THEY WERE RETURNING US TO OUR CELLS. SOME VOLUNTEERED THEIR OPINIONS THAT THEY NO LONGER WANT TO A MATE. THE C/O'S STATED "MIGHT WE'LL BE BACK IN FORCE" & "YOU EITHER GET UP WITH SOMEONE OR WE'LL COME & BLOW YOU AWAY AGAIN!" THIS AN EGREGIOUS VIOLATION OF INSTITUTIONAL POLICY - P-B-S-P HAS HAD TWO (2) DEATHS BETWEEN MATES JUST LAST YEAR (2005). THE PROPER WAY TO GET UP TWO PEOPLE IS TO VERIFY COMPATIBILITY WITH EACH INDIVIDUAL & HAVE THE "MARRIAGE FORM" SIGNED. THIS CONDUCT BY THE P-B-S-P STAFF CLEARLY SHOWS THAT P-B-S-P STAFF DOES NOT COMPLY WITH ~~STATE~~ INSTITUTIONAL PROCEDURE, POLICY, RULES, REGULATIONS OR RESPECT TO INMATES RIGHTS. AND THAT P-B-S-P STAFF RETALIATES & THREATENS INMATES WHO DO NOT COMPLY WITH THEIR ORDERS AS THEY SEE FIT. REPLICAN BAY HAS A HISTORY OF INMATE RIGHT VIOLATIONS AND HAS BEEN ADDRESSED/SANCTIONED BY THE CALIFORNIA COURTS TO UPHOLD & FOLLOW THE LAW OF INMATE RIGHTS. BUT P-B-S-P STILL RUNS THEIR PRISON & DOES WHAT THEY WANT REGARDLESS OF LOWER ORDERS & INMATE UNCONSTITUTIONAL & INSTITUTIONAL RIGHTS.

AFTER WE ACCEPTED OUR SILENCE, THE C/O'S PROCEEDED TO PLACE US BACK IN OUR CELL BUT FIRST FURTHER STRIPPED ME OF MY SOCKS, LEAVING ME NOW ONLY IN MY UNDERWEAR. THE C/O'S PUT ME & MY CO-ELUMATE BACK IN OUR CELL #13 BLOC 8, WHICH WAS STRIPPED BARE OF ALL CLOTHING, LINEN, & MATTRESS. THE CELLS WERE COVERED IN A GREY POWDER WHICH BURNED MY EYES, NOSE, HANDS, FEET & SKIN. IT ALSO HAD ME COUGHING, NOSE RUNNING BAD, IT BURNED IN LUNGS & I HAD DIFFICULTY BREATHING. ALSO THE FLOOR & BACK WALL WERE SOAKED IN AN ORANGE PINK LIQUID WHICH HAD ACCIDENTALLY RAN DOWN & FORMED A POOL ON THE FLOOR. I ASKED THE BLOC #8 FLOOR OFFICER FOR SOMETHING TO CLEAN THE CELL WITH - SOAP & WATER, BUT HE STATED THAT WE HAD "NOTHING COMING". THIS IS AN EXTREME INSTITUTIONAL POLICY VIOLATION AND A HAZARD TO OUR HEALTH & VIOLATION TO ME ALONE WITH MY CONSTITUTIONAL RIGHTS. THIS EXPOSURE SEEMED TO BE SOME SORT OF RETALIATORY ACT, sadistic PUNISHMENT OR PLAIN & OBVIOUS ~~negligent~~ OR WILLFUL NEGLIGENCE. I ALSO ASKED FOR TOILET PAPER, HE REFUSED. I FINALLY USED THE BATHROOM BUT WAS UNABLE TO CLEAN MYSELF OF ANYTHING SINCE I HAD NO TOILET PAPER. TOILET PAPER IS A BASIC HUMAN NECESSITY FOR HYGIENE. THE CELL WAS STRIPPED BARE & HIGHLY CONTAMINATED, THE C/O WOULD NOT GIVE ME A MATTRESS, SHEETS, BLANKETS, T-SHIRT OR SOCKS, EVEN AFTER I ASKED SEVERAL TIMES. WHEN DINNER CAME I ASKED FOR A SPOON & THE C/O AGAIN DENIED ME STATING "YOU'LL HAVE TO USE YOUR FINGERS". THAT SUNDAY NIGHT I COULD NOT SLEEP. THE CELL WAS VERY VERY VERY COLD, THE VENT WAS BLOWING COLD AIR & MY BODY WAS IN PAIN & BURNING FROM THE CONTAMINATION. IN MORNING I AGAIN ASKED THE C/O FOR SOMETHING TO CLEAN WITH & YET TO KNOW THE CELL WITS STILL CONTAMINATED, I ALSO ASKED FOR A T-SHIRT OR SOMETHING TO COVER MYSELF. BUT HE STATED "I CAN'T GIVE YOU ANYTHING UNTIL THEY TELL ME." AGAIN AT BREAKFAST & DINNER I WAS DENIED A SPOON. THIS TREATMENT WHICH IS GROSSLY INHUMANE CONTINUED FOR DAY & NIGHT OF S. FOR THESE DAYS I WAS DEPRIVED OF SLEEP BECAUSE THE CONTAMINATED CELL, THE CONTAMINATED & IT WAS IMPOSSIBLE TO TRY & SLEEP ON A BARE COLD STEEL BUNK IN ONLY UNDERWEAR. THE SERIOUS SLEEP DEPRIVATION & BODY POSITIONS I HAD TO MAINTAIN BOTH OUTSIDE IN CELL CAUSED ME HEADACHES, COLD CHILLS, COUGHS, HAD ALL MY JOINTS & BONES HURTING & MY FEET HURTING BADLY. DURING ALL THIS TIME I WAS NOT TOLD MY STATUS, WAS NOT TOLD WHY I WAS BEING TREATED THIS COLD, INHUMANE OR WAS NOT GIVEN A 114, A CO CLOTH, OR A 115. THIS TREATMENT WAS FOUl INHUMANE AND CRUEL & UNUSUAL PUNISHMENT. IT IS ALSO RACIAL DISCRIMINATION.

RELIEF/ACTION REQUESTED

CONT:

PUNISHMENT EXACED UPON ME BE OFFICIALLY REPRIMANDED & DISCIPLINED TO THE FULLEST EXTENT, AND THAT I BE ~~REIMBURSED~~ FROM INADEQUATELY COMPENSATION FOR THIS EGREGIOUS VIOLATION OF MY CONSTITUTIONAL RIGHTS.

- 3) THAT I BE TRANSFERRED FROM THIS INSTITUTION, AS SOON AS POSSIBLE, TO ONE CLOSER TO MY FAMILY, AND NOT BE RETURNED/TRANSFERRED BACK TO THIS MAINLINE.
- 4) FINALLY THAT NO RETALIATION OR HARRASMENT BE WAGED OR CONDUCTED UPON ME FOR AGAINST ME FOR THIS ACTION.

EDUARDO G. REYES P71966

PELICAN BAY STATE PRISON
SECOND LEVEL REVIEW

DATE: **JAN 31 2007**

Inmate REYES, P-71966
 Pelican Bay State Prison
 Facility B, General Population
 Building 7, Cell 221

RE: **WARDEN'S LEVEL DECISION**
 APPEAL LOG NO. PBSP-A-06-01640

APPEAL: PARTIALLY GRANTED
ISSUE: STAFF COMPLAINT

This matter was reviewed by ROBERT A. HOREL, Warden, at Pelican Bay State Prison (PBSP). T. Bosley, Correctional Lieutenant interviewed the inmate during a Fact-Finding investigation on November 9, 2006.

ISSUES

The inmate requests adverse action be taken against staff for their alleged misconduct. He also requests that no retaliation be taken against him for filing the appeal and seeks financial compensation.

FINDINGS

I

The inmate claims on June 24, 2006 staff unjustly utilized Oleoresin Capsicum (OC) on him while housed in his assigned cell. He was ordered to strip down to his boxer shorts, socks and shoes and placed into handcuffs and escorted out of the cell for decontamination purposes. His shoes were then confiscated as he was placed on a concrete yard which he claims had not been cleaned for sometime where he remained handcuffed through the cold night without any food or means to use the restroom.

Upon returning to his cell the following morning he discovered that all of his property had been confiscated, including his bedding and the remnants of OC lingered in the cell. His request for cleaning supplies was denied and he remained without clothing, bedding, eating utensils and a means for maintaining his hygiene for the next five days.

II

This complaint was assigned to a Use of Force Fact Finder for investigation. The Fact Finder interviewed the inmate and staff concerning the allegations. The Fact Finder completed a report concerning the allegations, the results of the investigation, and an explanation of how the conclusion was reached.

Supplement Page 2
Reyes, P-71966
Appeal # PBSP-A-06-01640

DETERMINATION OF ISSUE

All submitted documentation and supporting arguments have been considered. Additionally, a thorough review has been conducted into the claim presented by the inmate and evaluated in accordance with PBSP's institutional procedures and departmental policies.

This incident is pending review by the Executive Review Committee (ERC) who will determine the finding for these allegations. The inmate will be advised of the finding at the completion of the ERC review. Retaliation will not be taken against the inmate as a result of the appeal in accordance with the California Code of Regulations Section 3084.1 (d), therefore, the APPEAL IS PARTIALLY GRANTED. However, financial compensation is not within the scope of the appeals process.

The inmate is also advised that this appeal addresses only the alleged misconduct and any request for the restoration of his program and modification to the disciplinary finding must be appealed separately. Furthermore, his request for a transfer should be discussed with his assigned counselor not via the appeals process.

MODIFICATION ORDER

No modification of this decision is required.



ROBERT A. HOREL
Warden
Pelican Bay State Prison

BDS # 47 1-29-07

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

CDC 1858 (2/97)

RIGHTS AND RESPONSIBILITY STATEMENT

The California Department of Corrections has added departmental language (shown inside brackets, in non-boldface type) for clarification purposes.

Pursuant to Penal Code 148.6, anyone wishing to file an allegation of misconduct by a departmental peace officer must read, sign and submit the following statement:

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER [this includes a departmental peace officer] FOR ANY IMPROPER POLICE [or peace] OFFICER CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' [or inmates'/parolees'] COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN [or inmate/parolee] COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE. [An inmate/parolee who makes a complaint against a departmental peace officer, knowing it is false, may be issued a serious disciplinary rule violation, in addition to being prosecuted on a misdemeanor charge.]

COMPLAINANT'S PRINTED NAME	COMPLAINANT'S SIGNATURE	DATE SIGNED	
INMATE/PAROLEE PRINTED NAME	INMATE/PAROLEE'S SIGNATURE	CDC NUMBER	DATE SIGNED
<u>REYES EDUARDO</u>	<u>Reyes Eduardo</u>	P-71966	2-19-07
RECEIVING STAFF'S PRINTED NAME	RECEIVING STAFF'S SIGNATURE	DATE SIGNED	

DISTRIBUTION:

ORIGINAL -

Public - Institution Head/Parole Administrator

Inmate/Parolee - Attach to CDC form 602

Employee - Institution Head/Parole Administrator

COPY - Complainant

State of California

Department of Corrections and Rehabilitation
Pelican Bay State Prison

Memorandum

Date : September 11, 2006

To : REYES, P71966
AF02L 000000126USubject: **EXCEPTIONAL DELAY IN REVIEW OF APPEAL LOG #: PBSP-A-06-01640**

This is to notify you that the due date on the above referenced appeal has been extended for the following reason:

- Unavailability of the appellant, staff, or inmate witness.
- Complexity of the decision, action, or policy.
- Necessary involvement of other agencies or jurisdictions.

Waiting for completion of F/F.

This notification is required per the California Code of Regulations, Title 15, Section 3084.6(b)(6). The new estimated completion date is 9-21-06.



Appeals Coordinator
Pelican Bay State Prison

State of California

Department of Corrections and Rehabilitation
Pelican Bay State Prison

Memorandum

Date : September 25, 2006

To : REYES, P71966
AF02L 000000126USubject: **EXCEPTIONAL DELAY IN REVIEW OF APPEAL LOG #: PBSP-A-06-01640**

This is to notify you that the due date on the above referenced appeal has been extended for the following reason:

- Unavailability of the appellant, staff, or inmate witness.
- Complexity of the decision, action, or policy.
- Necessary involvement of other agencies or jurisdictions.

Completion of F/F

This notification is required per the California Code of Regulations, Title 15, Section 3084.6(b)(6). The new estimated completion date is 10-5-06.


Appeals Coordinator
Pelican Bay State Prison

State of California

Department of Corrections and Rehabilitation
Pelican Bay State Prison

Memorandum

Date : October 5, 2006

To : REYES, P71966
AF02L 000000126U

Subject: **EXCEPTIONAL DELAY IN REVIEW OF APPEAL LOG #: PBSP-A-06-01640**

This is to notify you that the due date on the above referenced appeal has been extended for the following reason:

- Unavailability of the appellant, staff, or inmate witness.
- Complexity of the decision, action, or policy.
- Necessary involvement of other agencies or jurisdictions.

Pending completion of fact finder

This notification is required per the California Code of Regulations, Title 15, Section 3084.6(b)(6). The new estimated completion date is 10-18-06.



Appeals Coordinator
Pelican Bay State Prison

State of California

Department of Corrections and Rehabilitation
Pelican Bay State Prison

Memorandum

Date : October 17, 2006

To : REYES, P71966
AF02L 000000102USubject: **EXCEPTIONAL DELAY IN REVIEW OF APPEAL LOG #: PBSP-A-06-01640**

This is to notify you that the due date on the above referenced appeal has been extended for the following reason:

- Unavailability of the appellant, staff, or inmate witness.
- Complexity of the decision, action, or policy.
- Necessary involvement of other agencies or jurisdictions.
- Awaiting completion of PTF.

This notification is required per the California Code of Regulations, Title 15, Section 3084.6(b)(6). The new estimated completion date is 11-18-06.



Appeals Coordinator
Pelican Bay State Prison

Memorandum

Date : November 20, 2006

To : REYES, P71966
BF07U 000000221U

Subject: **EXCEPTIONAL DELAY IN REVIEW OF APPEAL LOG #: PBSP-A-06-01640**

This is to notify you that the due date on the above referenced appeal has been extended for the following reason:

- Unavailability of the appellant, staff, or inmate witness.
- Complexity of the decision, action, or policy.
- Necessary involvement of other agencies or jurisdictions.

✓ Awaiting completion of fact finder

This notification is required per the California Code of Regulations, Title 15, Section 3084.6(b)(6). The new estimated completion date is 12-04-06.



Appeals Coordinator
Pelican Bay State Prison

State of California:

Department of Corrections and Rehabilitation
Pelican Bay State Prison

Memorandum

Date : November 30, 2006

To : REYES, P71966
BF07U 000000221USubject: **EXCEPTIONAL DELAY IN REVIEW OF APPEAL LOG #: PBSP-A-06-01640**

This is to notify you that the due date on the above referenced appeal has been extended for the following reason:

- Unavailability of the appellant, staff, or inmate witness.
- Complexity of the decision, action, or policy.
- Necessary involvement of other agencies or jurisdictions.

✓ Awaiting completion of fact finder

This notification is required per the California Code of Regulations, Title 15, Section 3084.6(b)(6). The new estimated completion date is 12-29-06.


Appeals Coordinator
Pelican Bay State Prison

State of California

Department of Corrections and Rehabilitation
Pelican Bay State Prison

Memorandum

Date : December 28, 2006

To : REYES, P71966
BF07U 000000221USubject: **EXCEPTIONAL DELAY IN REVIEW OF APPEAL LOG #: PBSP-A-06-01640**

This is to notify you that the due date on the above referenced appeal has been extended for the following reason:

- Unavailability of the appellant, staff, or inmate witness.
- Complexity of the decision, action, or policy.
- Necessary involvement of other agencies or jurisdictions.

✓ Awaiting for completion of fact finder.

This notification is required per the California Code of Regulations, Title 15, Section 3084.6(b)(6). The new estimated completion date is 01/29/07.



Appeals Coordinator
Pelican Bay State Prison

Edward P. T. 1966
b4-110 P.S. S.P. P.O. Box 1802
Crescent City CA 95532

PELICAN BAY STATE PRISON
5905 Lake Earl Dr
Crescent City CA 95532



RECEIVED



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COURT FOR THE NORTHERN DISTRICT
OF CALIFORNIA
460 GOLDEN GATE AVENUE, BOX 36060
SAN FRANCISCO, CA 94102

CHARLES W. WEKIN
CLERK, U.S. DISTRICT COURT OF CALIFORNIA
2006

EDUARDO REYES, pro se litigant
C.D.C. # P-71966
P.B.S.P. P.O.Box 7500
CRESCENT CITY, CA 95532

ORIGINAL

UNITED STATES DISTRICT COURT
E-filing NORTHERN DISTRICT OF CALIFORNIA.

EDUARDO REYES.
plaintiff

v.

ROBERT MOREL Warden, ET AL.
Respondant

CV 08 0813

CASE NO:

SUMMONS.

SI

(PR)

To. Defendants: ROBERT MOREL, M.YAX, S. ANDERSON, "John Does",
Sgt. Peppiot, Slavec, Chapman, Miller, Love, George
Rich Creek, D. Nelson.

You are hereby jointly summoned and required to serve upon plaintiff EDUARDO REYES, whose address is P.B.S.P., P.O.B. 7500, CRESCENT CITY, CA 95532, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons, if you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint.